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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,998	05/24/2001	Peter Laros	99999-20098	2640

7590 08/21/2003

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ONE IBM PLAZA
CHICAGO, IL 60611

EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 08/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/864,998

Applicant(s)

LAROS, PETER

Examiner

Stephen A Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 05 June 2003.

2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 26-46 is/are pending in the application.

4a) Of the above claim(s) 26-33 is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 34-46 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 34-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 34, line 11, the phrase "horizontal at a common resting point" appears to unclear and vague. In claim 46, line 3, the phrase "parallel with horizontal" appears to be unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith'514.

Smith'514 shows a furniture element comprising a seat portion, a back portion having a pair of back panels (40) connected to each other at a first angle along a center line (42), the seat portion has a pair of seat panels (41) connected to each other at the first angle along a center line, and the back portion and seat portion are connected to each other at a second angle along a base line. The base line of the seat portion and

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the base line of the back portion are sloped at a third angle relative at a common resting point.

With claim 36, the back portion is longer than the seat portion.

With claim 38, the center line sections and base line sections form an inverted four-sided pyramid.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 35,37, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith'514.

Smith'514 discloses the claimed invention except for the third angle to be 45 degrees. It would have been an obvious matter of design choice to specify the third angle to be 45 degrees, since such a modification would have involved a mere change

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in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105, USPQ 237 (CCPA 1955).

With regards to claim 37, Smith'514 discloses the claimed invention except for the back portion to be twice the length of the seat portion. It would have been an obvious matter of design choice to design the back portion to be twice the length of the seat portion, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105, USPQ 237 (CCPA 1955).

With claim 39, Smith'514 discloses the claimed invention except for the center line sections and base line sections at the resting point to slope at 45 degrees. It would have been an obvious matter of design choice to specify the center line sections and base line sections at the resting point to slope at 45 degrees, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105, USPQ 237 (CCPA 1955).

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith'514 in view of Baus et al.

Smith'514 discloses the claimed invention except for a height-adjustable head support element placed on the back portion. Baus et al teach a height-adjustable head support element (134) placed on the back portion of the wedge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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incorporate a height-adjustable head support element placed on the back portion of Smith'514's furniture element, in order to provide adjustable support for the user's head.

Claims 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith'514 in view of Ugalde.

Smith'514 discloses the claimed invention except for the furniture element to include a foot support. Ugalde teaches an adjustable footrest comprising a pair of base members (16b) and support members (18b). The footrest has a longitudinal rib. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a footrest for Smith'514's furniture element as taught by Ugalde. This modification would provide a footrest to allow the user to comfortably support one's feet.

Remarks

The examiner has reviewed and acknowledged the applicant's comments in the Amendment, filed on June 5, 2003. The applicant's amendment has necessitated the new grounds of rejection as presented in this Office action. Therefore, new claims 34-46 are not patentable over the prior art as discussed above.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


Stephen Vu
August 14, 2003


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600